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7 BEFORE THE INSURANCE COMMISSIONER  
8 OF THE STATE OF WASHINGTON

9 In the Matter of the Application  
10 regarding the Conversion and  
11 Acquisition of Control of Premera Blue  
12 Cross and its Affiliates.

No. G 02-45

PREMERA'S RESPONSE TO  
INTERVENORS' MOTION FOR  
EMERGENCY HEARING

13  
14 On October 21, 2003, the Intervenor requested an emergency hearing before the  
15 Commissioner to address two principal topics: first, what consequences should attach to  
16 the results of discussions, then not yet held, between Premera and the OIC Staff and OIC  
17 consultants; and second, how and when the Intervenor should be given access to  
18 materials that they have requested from Premera. The first issue is purely theoretical; the  
19 second should be addressed to Judge Finkle. There is no "emergency"; this matter is not  
20 properly raised before the Commissioner; and there is no basis for the relief that the  
21 Intervenor seek.

22 A. The Intervenor's request for an advisory opinion should be denied.

23 The Intervenor first assert that Premera is proposing to "negotiate significant  
24 changes in the form of the proposed transaction" and that this conflicts both with the goal  
25 of public involvement in the review process and the Intervenor's "statutory right to

PREMERA'S RESPONSE TO INTERVENORS'  
MOTION FOR EMERGENCY HEARING - 1

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1 meaningfully protect their significant interests.” Motion at 2-3. Based on this breathless  
2 assessment, the Intervenor request a ruling that, “if Premera suggests or agrees to any  
3 substantive change to the structure of the proposed conversion transaction, such a change  
4 will be treated as the submission of a new Form A, thereby triggering a new review period  
5 . . . .” Motion at 3. The Intervenor’s claims are misplaced.

6 As explained in the Third Joint Status Report submitted by the OIC Staff and  
7 Premera on October 20, 2003, Premera has asked for an opportunity to discuss with the  
8 OIC Staff and consultants some of the concerns identified in the draft consultant reports.  
9 The outcome of such discussions is not yet known. The OIC Staff and Premera have  
10 agreed, however, that any resolution will be promptly disclosed to the Intervenor.

11 Through this process, Premera envisions identifying conditions that could be  
12 imposed by the Commissioner upon approval of the proposed reorganization and that  
13 Premera may be willing to accept. The consultants could take such potential acceptance  
14 of conditions into account in preparing their final reports. Without discussion between  
15 Premera and OIC Staff and consultants, the Commissioner will not have the benefit of the  
16 best thinking of the OIC Staff, its consultants, and Premera on the reorganization proposal  
17 and the conditions that the Commissioner should attach to approval, if granted.<sup>1</sup>

18 The Intervenor evidently seek to abort these discussions before they can occur.  
19 The “emergency” they cite is otherwise inexplicable. The Intervenor have no standing to  
20 raise such concerns, and it is wholly inappropriate to make the advisory ruling that they  
21 request.

22 When the Commissioner granted the Intervenor’s requests to participate in this  
23 proceeding, he imposed requirements and limitations. Among other things, he specifically

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24 <sup>1</sup> Both RCW 48.31C.030(5)(a)(ii)(C) and RCW 48.31C.030(5)(c) provide that the  
25 Commissioner may condition the approval of a proposed transaction on the removal of the  
basis of disapproval within a specified period of time.

1 noted that “none of the interveners have shown that they possess any specialized expertise  
2 in valuation or intend to retain such expertise.” Fourth Order: Ruling on Motions to  
3 Intervene, at 8. The Commissioner indicated, therefore, that the investment banking and  
4 accounting experts retained by the OIC Staff would alone address such issues. It is the  
5 investment banking consultant whose concerns, echoed and expanded upon by the OIC  
6 Staff’s legal consultant, have given rise to the currently planned discussions. The  
7 Intervenors have no light to shed on such matters. Nor would the outcome of discussions  
8 affect the interests asserted by the Intervenors in this proceeding.<sup>2</sup>

9 Even if the Intervenors had standing to raise the question, the Intervenors’ request  
10 for relief is wholly inappropriate. Indeed, it verges on frivolous to treat any response by  
11 Premera to the OIC consultants’ suggestions, other than outright rejection, as “the  
12 submission of a new Form A.” It is in the interest of all parties, and above all the  
13 Commissioner, to narrow the range of issues in dispute prior to the hearing. Moreover,  
14 given the law of the case, as determined by Judge Casey—namely, that the Commissioner  
15 must render a decision within 60 days after the submission of a complete Form A  
16 Statement—the “relief” sought by the Intervenors would appear to shorten the time period  
17 now allowed for decision.

18 B. Intervenors’ requests for documents do not qualify as an emergency. To the extent  
19 that Intervenors wish to shorten the period for document production, they should  
20 seek relief from Judge Finkle.

21 It is ironic that, less than a week after suggesting that “future attempts to modify  
22 the discovery schedule, or raise discovery disputes, be referred to the Special Master as  
23 the Commissioner originally contemplated” (“Intervenors’ Concerns and Objections  
24 Concerning Prehearing Procedure,” p. 4), the Intervenors ask the Commissioner to order

25 <sup>2</sup> The OIC Staff has filed a motion on a related topic, to which Premera is responding separately.

1 Premera to respond "immediately" to discovery requests that the Intervenor served upon  
2 Premera on October 17, 2003. See Exhibit A. The Intervenor's request is both misguided  
3 and misdirected.

4 The Intervenor seeks three discovery items: Premera's submissions to the OIC  
5 Staff in response to the draft OIC consultants' reports; the draft Alaska consultant reports;  
6 and the final OIC consultant reports. Premera does not have either of these last two items.  
7 Even if it did, it cannot be expected to produce them "immediately" or "on October 27,  
8 2003," because reviewing voluminous reports and marking information as "confidential"  
9 and "attorney's eyes only" cannot be done instantaneously. No less than the week  
10 allowed for the marking of the draft OIC consultant reports under the Commissioner's  
11 "Fifteenth Order: Ruling on Disclosure of OIC's Draft Consultant Reports to the  
12 Intervenor" will be required.

13 If, as it now appears, Intervenor wishes to shorten the 30 days allowed for Premera  
14 to respond to their Third Request for Production of Documents, they should direct their  
15 request initially to Premera and then, if the parties cannot agree, to the Special Master for  
16 resolution. To insist that the Commissioner attend to such matters, and that he do so on an  
17 "emergency" basis, is an abuse of the process that has been established in this matter.

18  
19 DATED this 22nd day of October, 2003.

20 PRESTON GATES & ELLIS LLP

21  
22 By Robert B. Mitchell  
23 Robert B. Mitchell, WSBA # 10874  
24 Thomas E. Kelly, Jr., WSBA # 05690  
25 Attorneys for PREMERA and Premera  
Blue Cross

PREMERA'S RESPONSE TO INTERVENOR'S  
MOTION FOR EMERGENCY HEARING - 4

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OCT 17 2003

PRESTON GATES & ELLIS LLP

BEFORE THE WASHINGTON STATE  
OFFICE OF THE INSURANCE COMMISSIONER

In The Matter Of The Application Regarding  
The Conversion And Acquisition Of Control  
Of Premera Blue Cross And Its Affiliates

No. G02-45

INTERVENERS' THIRD REQUEST  
FOR PRODUCTION OF  
DOCUMENTS

TO: Applicant, Premera and Premera Blue Cross and its Affiliates;

AND TO: Robert Mitchell and Thomas Kelly, their attorneys

PURSUANT TO RCW 48.31C.030(4); 48.31B.015(4)(b); 34.05.446; CR 26 and 34,  
you are required to answer, in writing, the following requests for production of  
documents. Unless otherwise agreed, documents produced are to be delivered to  
Richard Spoonemore, Sirianni, Youtz, Meier and Spoonemore at 1100 Millennium  
Tower, 719 Second Avenue, Seattle, WA 98104.

These requests for production are continuing in nature and at such time as  
further information is discovered which makes any prior answer incomplete,  
inaccurate, or misleading, the answer should be supplemented promptly at the time of

INTERVENERS' THIRD REQUEST FOR  
PRODUCTION OF DOCUMENTS - 1

COPY

SIRIANNI YOUTZ  
MEIER & SPOONEMORE  
719 SECOND AVENUE, SUITE 1100  
SEATTLE, WASHINGTON 98101  
TEL (206) 223-0202 FAX (206) 223-0216

1 discovery of additional information. These requests incorporate by reference the  
2 definitions set forth in the first request for production of documents.

3  
4 REQUEST FOR PRODUCTION NO. 28:

5 Please produce the final consultant reports and executive summaries submitted  
6 to Premera by the OIC Staff.

7 RESPONSE:  
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16 REQUEST FOR PRODUCTION NO. 29:

17 Please produce the final consultant reports and executive summaries submitted  
18 to Premera by Alaska Division of Insurance.

19 RESPONSE:  
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3 REQUEST FOR PRODUCTION NO. 30:

4 Please produce all documents provided to OIC and/or its staff since October 10,  
5 2003 that pertain to, relate to, or address in any manner the draft consultant reports  
6 and/or executive summaries. By way of example, this request includes, but is not  
7 limited to, any documents that comment on the draft consultant reports, suggest  
8 amendments to those reports or suggest that Premera may be willing to accept  
9 conditions or alterations of the structure of the proposed conversion, any negotiations  
10 surrounding such conditions or alterations, any offers to compromise, and any  
11 comments on the factual, legal or analytic accuracy of the draft consultant reports  
12 and/or executive summaries.

13 RESPONSE:  
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1 REQUEST FOR PRODUCTION dated this 17<sup>th</sup> day of October, 2003.

2 SIRIANNI YOUTZ MEIER & SPOONEMORE

3  
4  
5 By: 

6 Richard E. Spoonemore, WSBA #21833

7 Attorney for Interveners Washington  
8 Citizen Action, American Lung  
9 Association of Washington, Northwest  
10 Federation of Community Organizations,  
11 Northwest Health Law Advocates, Service  
12 Employees International Union  
13 Washington State Council, The Children's  
14 Alliance, Washington Academy of Family  
15 Physicians, Washington Association of  
16 Churches and Washington State NOW  
17 Washington Association of Community  
18 and Migrant Health Centers, Washington  
19 Protection and Advocacy System

20  
21 On behalf of all Intervener Groups, with  
22 authority.  
23  
24  
25  
26



1 STATE OF WASHINGTON )  
2 : ss.  
3 County of \_\_\_\_\_ )

4 I, \_\_\_\_\_, am counsel for \_\_\_\_\_ herein  
5 and state that the foregoing answers and response are true and correct to the best of my  
6 knowledge.

7  
8 \_\_\_\_\_  
9  
10 SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of  
11 \_\_\_\_\_, 2003.

12  
13 \_\_\_\_\_  
14 NOTARY PUBLIC in and for the State of  
15 Washington, residing at \_\_\_\_\_.  
16 My commission expires: \_\_\_\_\_.

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12 Acquisition of Control of Premera Blue  
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No. G 02-45

ORDER: INTERVENORS'  
OCTOBER 21, 2003 MOTION FOR AN  
EMERGENCY HEARING  
[Proposed]

14 On October 21, 2003, the Intervenor served and filed an emergency motion. The  
15 Commissioner scheduled a hearing on the motion for 2:00 p.m. on October 22<sup>nd</sup>. Premera  
16 submitted a timely written response to the Intervenor's motion. At the hearing, the  
17 Intervenor, the OIC Staff, and Premera offered oral argument. Based on the oral and  
18 written submissions of the parties,

19 THE FOLLOWING IS ORDERED this \_\_\_\_ day of October, 2003, in regard to  
20 the Intervenor's Requests for Relief:

21 1. In regard to Paragraph 1 of the Intervenor's Request for Relief, which asks  
22 the Commissioner to rule that "[i]f Premera requests or agrees to substantive changes to  
23 the structure of the proposed conversion transaction," the proposed changes will not be  
24 considered unless certain things occur, the Commissioner declines to make a ruling on this  
25 issue because it is, at this point in time, hypothetical and speculative. If and when

ORDER: INTERVENORS'  
OCTOBER 21, 2003 MOTION FOR AN  
EMERGENCY HEARING - 1

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1 Premera requests or agrees to substantive changes, the Intervenor can bring the  
2 appropriate motion. At this time, the relief requested is denied without prejudice for the  
3 Intervenor to renew the motion at a later date. The Commissioner finds that there was no  
4 emergency justifying the filing of a request for an emergency motion.

5 2. In regard to Paragraph 2 of the Intervenor's Request for Relief, which asks  
6 the Commissioner to rule that "Premera be ordered to immediately produce to Intervenor  
7 unredacted copies of its submission to the OIC Staff in response to the consultants'  
8 reports," Premera has indicated that, while not required to do so for 30 days after receipt  
9 of the Intervenor's Request for Production of documents (which was served on October  
10 17, 2003), Premera is willing to produce by October 27, 2003, the following, subject to  
11 the terms of the Eighth Order: Protective Order:

- 12 • Premera's letter to John Hamje dated October 15, 2003, and attached exhibits 1-7  
13 suggesting amendments to the draft consultant reports to address factual errors,  
14 and
- 15 • Premera's letter to James Odiome dated October 17, 2003, and attached outline of  
16 transaction structure comments.

17 The Commissioner finds that there was no emergency justifying the filing of a request for  
18 an emergency hearing. This discovery matter should have been addressed to the Special  
19 Master. In addition, there was no effort by the Intervenor to simply ask Premera to  
20 accelerate its production.

21 3. In regard to Paragraph 3 of the Intervenor's Request for Relief, which asks  
22 the Commissioner to rule that "Premera be ordered to immediately produce to Intervenor  
23 unredacted copies of the Alaska consultant reports," the Commissioner declines to make a  
24 ruling on this issue because it is, at this point in time, hypothetical and speculative, given  
25 the fact that Premera does not yet have such reports. Again, this is a discovery matter that

ORDER: INTERVENORS'  
OCTOBER 21, 2003 MOTION FOR AN  
EMERGENCY HEARING - 2

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1 should be brought to the attention of the Special Master by regular motion. The  
2 Commissioner suggests that the Intervenor first ask Premera to supply requested  
3 documents on an accelerated basis before bringing such a motion. The Commissioner  
4 finds that there was no justification for bringing a motion to the Commissioner on this  
5 issue, much less an emergency motion.

6 4. In regard to Paragraph 4 of the Intervenor's Request for Relief, which asks  
7 the Commissioner to rule that "Premera or the OIC Staff be ordered to produce to  
8 Intervenor unredacted copies of the final OIC consultant reports on October 27, 2003 and  
9 the Alaska consultant reports as soon as available," the Commissioner declines to make a  
10 ruling on this issue because it is, at this point in time, hypothetical and speculative, given  
11 the fact that such reports do not yet exist. In addition, the Commissioner believes that  
12 Premera must be given a reasonable time to redact proprietary and confidential  
13 information before producing such documents. This is another discovery matter that  
14 should be brought to the attention of the Special Master by regular motion, after the  
15 Intervenor first seek to resolve the matter with Premera. The Commissioner again finds  
16 that there is no justification for bringing a motion to the Commissioner on this issue, much  
17 less an emergency motion.

18  
19  
20 MIKE KREIDLER  
21 INSURANCE COMMISSIONER  
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ORDER: INTERVENOR'S  
OCTOBER 21, 2003 MOTION FOR AN  
EMERGENCY HEARING - 3

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9 In the Matter of the Application  
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11 Acquisition of Control of Premera Blue  
12 Cross and its Affiliates.

No. G 02-45

PREMERA'S RESPONSE TO OIC  
STAFF'S MOTION TO DISREGARD  
"LATE-FILED AMENDMENTS"

13  
14 INTRODUCTION

15 The "OIC Staff's Motion to Disregard Premera's Late-Filed Amendments to Form  
16 A" [sic] ("OIC Motion") is a classic Catch-22. It blames Premera for seeking to respond  
17 to the OIC consultants' comments within the time frame demanded by the OIC Staff. It  
18 seeks to convert Premera's response to the Commissioner's notice of deficiency into an  
19 amendment of the Form A and then to exclude that response as belated, suggesting that  
20 the Commissioner is condemned to consider a Form A that he has already found to be  
21 deficient. It attempts to block any discussions that might narrow the issues in dispute  
22 before the hearing. It does all this in an effort to coerce Premera into agreeing to a waiver  
23 of the time allowed for the decision on Premera's Form A Statement, as set forth in the  
24 order entered by the Thurston County Superior Court.

25 PREMERA'S RESPONSE TO OIC STAFF'S  
MOTION TO DISREGARD "LATE-FILED  
AMENDMENTS" - 1

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1 The record belies the assertions in the OIC Motion. There is no authority for the  
2 proposition that the OIC Staff may approve technical amendments to a Form A but the  
3 Commissioner may not impose equivalent conditions upon approval. The remedies that  
4 the OIC Staff seeks are wholly improper. The requested relief should be denied.

5 ARGUMENT

6 A. Premera has followed the instructions of the OIC Staff.

7 In early September, Premera contacted the OIC Staff through its lead consultant  
8 and asked whether it would be possible to meet to discuss the consultants' concerns about  
9 Premera's Form A Statement, so that Premera could begin to understand those concerns  
10 and consider how to address them. Premera was advised that substantive discussions  
11 should await issuance of the draft consultant reports.<sup>1</sup> On October 7, the second business  
12 day after the draft reports were delivered, Premera met with the OIC Staff and proposed  
13 getting together to address the consultants' comments on the Form A. Premera reiterated  
14 that request on October 8.<sup>2</sup>

15 Mr. Odiorne responded to Premera on October 10 by noting a series of procedural  
16 concerns and then proposing a process for discussing the consultants' comments:

17 I believe that the only way to really address the concerns I identified above  
18 is to set a very aggressive schedule for the negotiations. . . . By close of  
19 business on Friday, October 17, I will identify . . . those [issues] which I  
20 believe have some possibility being resolved through negotiation and  
21 schedule necessary consultant input for October 20-22. On October 23, we  
22 will notify the consultants and the intervenors of the results of the  
23 negotiations. The consultants will incorporate any negotiated agreement  
24 into their final reports that will be filed on October 27.<sup>3</sup>

23 <sup>1</sup> Declaration of John P. Domeika, ¶¶ 2-3.

24 <sup>2</sup> *Id.*, ¶¶ 4-5.

25 <sup>3</sup> Declaration of James T. Odiorne, Exhibit A.

1 Premera asked for modification of this proposed schedule, but Mr. Odiorne on  
2 October 14, 2003, rejected Premera's request. He insisted upon the following:

3 **Tuesday, Wednesday, Thursday, October 21-23** – OIC will make  
4 arrangements of OIC consultants to be available as necessary for  
discussions. . . .

5 **By 3 p.m., Friday, October 24** – OIC and Premera will furnish OIC  
6 consultants and parties a memorandum memorializing results of the  
7 discussions for the purpose of incorporating the results into the consultants'  
8 final reports. This is contingent upon no significant additional time being  
required by the consultants to revise the reports in conformity with any  
changes.

9 **Monday, October 27** – OIC consultants submit final reports including any  
revisions resulting from the discussions.

10 I fully realize that this is a very aggressive schedule, but it is the only way  
11 we can expect to provide a meaningful public process, develop a complete  
and sufficient record, and meet the Commissioner's current schedule.<sup>4</sup>

12 At the OIC Staff's request, the meetings originally scheduled for October 21-23 have been  
13 shrunk to a single meeting on October 22. As proposed by the OIC Staff, Premera expects  
14 the outcome of this meeting to be reflected in a memorandum distributed to (among  
15 others) the Intervenors on October 24, *before* the issuance of the final expert reports.

16 Having insisted that Premera meet the schedule laid out in Mr. Odiorne's emails,  
17 the OIC Staff now inexplicably claims that such discussions are "too late" to serve any  
18 legitimate purpose.<sup>5</sup> On the contrary, this is an ideal time to explore whether the issues  
19 for hearing can be narrowed.

20  
21  
22 <sup>4</sup> *Id.*, Exhibit C.

23 <sup>5</sup> To assert that the consultants would need "additional time for data gathering and  
24 evaluation" if Premera were to signal acceptance of some of the consultants' own  
25 suggestions (OIC Motion at 7) is preposterous. Surely the consultants do not insist upon  
changes that they would have to study further to find appropriate.

1 B. Now is the time for discussion.

2 Last February, as Mr. Odiorne notes (Declaration, ¶ 10), the OIC Staff identified  
3 some issues and invited Premera to negotiate over them. Premera responded that it  
4 needed to understand the full range of potential issues before initiating negotiations. Mr.  
5 Odiorne fails to note this response; he also neglects to mention that the consultants spent  
6 another seven months completing their analysis. This suggests that the February proffer  
7 was premature as well as partial. The consultants' draft reports, by contrast, set forth all  
8 potential issues.

9 Mr. Odiorne also claims (Declaration, ¶ 10) that the Commissioner's statutory  
10 authority to impose conditions is somehow weaker than staff's ability to negotiate  
11 amendments. But RCW 48.31C.030(5)(a)(ii)(C) expressly authorizes the Commissioner  
12 to condition approval of the transaction on the removal of the basis of disapproval,  
13 specifically including with respect to any material change that is proposed in "the business  
14 or corporate structure or management" of a health carrier. In addition, RCW  
15 48.31C.030(5)(c) provides general authority of the Commissioner to impose conditions in  
16 a Form A proceeding. Such explicit statutes carry more weight than informal practice or  
17 administrative convenience.

18 Premera believes that it is always worthwhile seeking to narrow the issues that  
19 must be determined at an adjudicative hearing. The OIC Staff should have the same  
20 interest in resolving issues identified by their consultants. If there can be no discussion of  
21 the consultants' comments and requested modifications now, early in the process, then  
22 such discussion will have to be deferred until the consultants are deposed and all the  
23 issues can be thrashed out at the hearing. It defies rational understanding to suggest that  
24 such an approach is consistent with full public participation and an informed decision.

25  
PREMERA'S RESPONSE TO OIC STAFF'S  
MOTION TO DISREGARD "LATE-FILED  
AMENDMENTS" - 4

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1 C. Premera has not amended its Form A.

2 The Thirteenth Order permitted but did not require Premera to amend its Form A  
3 Statement. Premera advised the Commissioner on October 8 that it did not intend to  
4 amend its Form A. The OIC Motion, however, repeatedly attempts to recharacterize what  
5 Premera has done or might do as an “amendment,” and then condemns it. In particular,  
6 the OIC Motion asserts that two submissions by Premera on October 17 constitute Form A  
7 amendments. That assertion is incorrect.

8 First, the OIC Motion cites Mr. Domeika’s letter and list of consultant-identified  
9 issues. This letter—*the very submission demanded on October 14 by the OIC Staff*—  
10 cannot be construed as a Form A amendment, because it is merely a list of matters to be  
11 discussed.<sup>6</sup> As the OIC Motion itself states (at p. 4), “[t]here is no guarantee that the OIC  
12 Staff and Premera will be able to arrive at a resolution with respect to any matters under  
13 discussion within the agreed time frame . . . .” Even if the discussions are productive, the  
14 result will not be an amendment of the Form A, but rather a memorandum issued on  
15 October 24.

16 Second, the OIC Motion cites the stock plan submitted by Premera as a purported  
17 Form A amendment. This characterization fails on many levels. Premera believes that a  
18 stock plan is not required as part of a Form A statement. At the OIC Staff’s request,  
19 however, Premera submitted Exhibit G-10 last October. That document describes the  
20 limitations upon any stock plan that Premera might adopt.<sup>7</sup> The OIC Staff did not list the  
21 absence of a proposed stock plan as a Form A deficiency in its letter of November 19,

22 \_\_\_\_\_  
23 <sup>6</sup> Such documents are assured confidentiality under Evidence Rule 408. If the OIC Staff  
24 has any question about this (see OIC Motion at ¶ 19), they should take the matter up with  
25 the Special Master.

<sup>7</sup> The stock plan submitted on October 17 is entirely consistent with Exhibit G-10; indeed,  
it incorporates Exhibit G-10 by reference.

1 2002, and Judge Casey did not reach the issue of whether that was a Form A deficiency  
2 last month. Nevertheless, to make sure that the Commissioner was given all of the  
3 information that he deemed necessary to evaluate Premera's proposed reorganization,  
4 Premera went to the effort to adopt a stock plan and to get it to the OIC Staff and  
5 consultants as soon as it was approved by the Premera Board on October 17, 2003.

6 The OIC Motion asserts not only that the stock plan is a Form A amendment but  
7 also that it is too late. With respect to the latter point, the statute requires a decision  
8 within 60 days after a Form A statement is complete. *See PREMERA v. Kreidler*,  
9 Thurston County Superior Court No. 03-2-00112-8 (Order entered September 5, 2003).  
10 If, as the OIC contends, Premera's Form A was deficient without the stock plan, then that  
11 plan was submitted far more than 60 days before the decision date that was set with that  
12 alleged deficiency in mind (March 15, 2004)—indeed, some 150 days before that date,  
13 and 90 days before the hearing. To suggest that the stock plan cannot now be considered  
14 is to make a mockery of the process that the OIC Staff purports to defend.<sup>8</sup>

15 D. The straw men raised in the OIC Motion are only that.

16 The OIC Motion asserts that the Commissioner must enter a preemptive order, lest  
17 Premera amend its Form A statement on the eve of the hearing. It also says that, if  
18 Premera and the OIC Staff negotiate until the hearings start, the public perception will be  
19 of a flawed process. No one has proposed late amendments or secret deals. On the  
20 contrary, as the correspondence between the OIC Staff and Premera reflects, both  
21 expected that the Intervenors, among others, would be notified promptly of any agreement  
22

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23 <sup>8</sup> If the Commissioner wants to give the OIC Staff some relief because the stock plan was  
24 submitted on October 17 rather than October 15, Premera does not object to the OIC's  
25 consultants having two more days to submit their final reports (i.e., October 29 rather than  
October 27).

1 growing out of their discussions and that the final consultant reports would reflect that  
2 outcome before being made public.

3 Equally misguided is the assumption underlying the OIC Motion that, if  
4 discussions are forbidden, the process leading to a decision will be more straightforward.  
5 If the issues cannot be narrowed at this stage, then depositions will take longer, hearing  
6 testimony will be extended, and the issues truly in contention will be potentially obscured  
7 by the need to clear away those that are not. One would think that the OIC Staff would be  
8 interested in resolving issues identified by their consultants as potentially troubling.  
9 Perhaps they should be reminded of the desirability of that goal.<sup>9</sup>

10 CONCLUSION

11 There is no basis whatever for the relief sought in the OIC Motion. If and when  
12 Premera offers an amendment to its Form A Statement, the Commissioner can consider  
13 whether to allow it. In the meantime, the parties should be encouraged to resolve  
14 differences where possible, not to avoid engagement.

15  
16 DATED this 22nd day of October, 2003.

17 PRESTON GATES & ELLIS LLP

18  
19 By Robert B. Mitchell  
20 Thomas E. Kelly, Jr., WSBA # 05690  
21 Robert B. Mitchell, WSBA # 10874  
22 Attorneys for PREMERA and Premera  
23 Blue Cross

23  
24 <sup>9</sup> WAC 10-08-130, cited in the OIC Motion, provides both that an order establishing  
25 deadlines may be "modified for good cause by subsequent order" and that "[n]othing in  
this rule shall be construed to limit the right of an agency to attempt informal settlement of  
an adjudicative proceeding at any time."

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7 BEFORE THE INSURANCE COMMISSIONER  
8 OF THE STATE OF WASHINGTON

9 In the Matter of the Application  
10 regarding the Conversion and  
11 Acquisition of Control of Premera Blue  
12 Cross and its Affiliates.

No. G 02-45

DECLARATION OF JOHN P.  
DOMEIKA

13  
14 I, John P. Domeika, declare and state as follows:

15 1. I am the Senior Vice President and General Counsel of Premera Blue Cross  
16 ("Premera"). I have personal knowledge of the matters set forth herein and am competent  
17 to testify to those matters.

18 2. In early September 2003, Yori Milo and I contacted the OIC Staff's lead  
19 consultant and asked whether it would be possible to get together. We said that we were  
20 interested in discussing any concerns that the consultants had and would be describing in  
21 their draft reports, so that we could understand the bases for those concerns and begin to  
22 consider how to address them.

23 3. After a conversation between the OIC Staff and their lead consultant, we  
24 were advised that any substantive discussions should await issuance of the draft consultant  
25 reports.

DECLARATION OF JOHN P. DOMEIKA - 1

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925 FOURTH AVENUE  
SUITE 2900  
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4. On October 7, 2003, shortly after receiving the consultants' draft reports, we met with the OIC Staff and asked when we could meet to discuss the concerns raised by the OIC's consultants—specifically, the investment banking consultant and the legal consultant.

5. On October 8, 2003, following the Commissioner's status conference, Mr. Milo had a follow-up conversation with the OIC Staff and again asked for an opportunity to meet.

6. Subsequent communications between the OIC Staff and Premera on this subject are attached as Exhibits A-E to the Declaration of James T. Odiorne.

I declare under penalty of perjury under the laws of the State of Washington that  
the foregoing is true and correct:

EXECUTED this 22<sup>nd</sup> day of October, 2003 at Seattle, Washington.

  
JOHN P. DOMEIKA

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7 BEFORE THE INSURANCE COMMISSIONER  
8 OF THE STATE OF WASHINGTON

9 In the Matter of the Application  
10 regarding the Conversion and  
11 Acquisition of Control of Premera Blue  
12 Cross and its Affiliates.

No. G 02-45

ORDER: OIC STAFF'S  
OCTOBER 21, 2003 MOTION  
[Proposed]

13  
14 On October 21, 2003, the OIC Staff served and filed a motion that they asked to be  
15 heard "as soon as practicable." The Commissioner scheduled a hearing on the motion for  
16 2:00 p.m. on October 22<sup>nd</sup>. Premera submitted a timely written response to the motion.  
17 At the hearing, the OIC Staff, Premera, and the Intervenors offered oral argument. Based  
18 on the oral and written submissions of the parties,

19 THE FOLLOWING IS ORDERED this \_\_\_\_ day of October, 2003, in regard to  
20 the OIC Staff's Requests for Relief:

21 1. In regard to the portion of Paragraph 17 of the OIC Staff's motion that asks  
22 the Commissioner to "disregard any and all amendments filed or to be filed by Premera to  
23 its Form A after October 15, 2003," the Commissioner declines to make a ruling on this  
24 issue because it is, at this point in time, hypothetical and speculative. If and when  
25 Premera files an amendment to its Form A and if and when Premera asks the

ORDER: OIC STAFF'S  
OCTOBER 21, 2003 MOTION - 1

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1 Commissioner to consider such an amendment, the OIC Staff can bring the appropriate  
2 motion. The relief requested is denied without prejudice for the OIC Staff to renew the  
3 motion at a later date.

4 2. With respect to the stock plan that, the Commissioner understands, was  
5 submitted to the OIC Staff on October 17, 2003, the Commissioner believes that the  
6 consultants would be remiss not to consider something that the Commissioner directed  
7 Premera to submit. With respect to the table of consultant comments that, the  
8 Commissioner understands, was submitted to the OIC Staff on October 17, 2003, the  
9 Commissioner believes that, if there are to be discussions aimed at narrowing the issues  
10 for hearing, they should take into consideration the materials that have been provided by  
11 Premera.

12 3. In regard to the portion of Paragraph 17 of the OIC Staff's motion that  
13 requests the Commissioner to direct the OIC Staff not to engage in any further discussions  
14 with Premera, the Commissioner declines to do so. The Commissioner does not direct  
15 people to meet and discuss or not to meet and discuss. If, however, the parties could  
16 narrow the issues for hearing, that would be a positive development.

17 4. In regard to Paragraph 18 of the OIC Staff's motion, which asks in the  
18 alternative for an extension of the deadline for submission of the OIC Staff's final reports,  
19 the Commissioner notes that Premera provided the materials at issue on October 17<sup>th</sup>,  
20 which was two days after the date that the OIC Staff contends at least the stock plan was  
21 due. In light of Premera's willingness to extend the deadline for submission of the OIC  
22 Staff's final reports by two days, the Commissioner hereby authorizes the OIC Staff to  
23 submit its final reports by October 29, 2003, rather than the current deadline of October  
24 27, 2003. Similarly, the OIC Staff will have two additional days to submit redacted  
25 reports to the public.

ORDER: OIC STAFF'S  
OCTOBER 21, 2003 MOTION - 2

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5. In regard to Paragraph 19 of the OIC Staff's motion, which asks the Commissioner to make a determination regarding Exhibit F, the Commissioner sees no reason why this confidentiality issue needs to be decided on an emergency basis, much less why the Commissioner should decide it in the first place. The OIC Staff is authorized to make a motion on this subject to the Special Master, on a normal briefing and hearing schedule to be set by the Special Master.

MIKE KREIDLER  
INSURANCE COMMISSIONER

ORDER: OIC STAFF'S  
OCTOBER 21, 2003 MOTION - 3

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BEFORE THE INSURANCE COMMISSIONER  
OF THE STATE OF WASHINGTON

In the Matter of the Application  
Regarding the Conversion and  
Acquisition of Control of Premera Blue  
Cross and its Affiliates

No. G02-45

CERTIFICATE OF SERVICE

I, Dennis M Tessier, certify that I served a copy of the following document(s):

1. PREMERA'S RESPONSE TO OIC STAFF'S MOTION TO DISREGARD  
"LATE-FILED AMENDMENTS "
2. PREMERA'S RESPONSE TO INTERVENORS' MOTION FOR  
EMERGENCY HEARING
3. DECLARATION OF JOHN P. DOMEIKA
4. PROPOSED ORDER: INTEVENORS' OCTOBER 21, 2003 MOTION  
FOR AN EMERGENCY HEARING
5. PROPOSED ORDER: OIC STAFF'S OCTOBER 21, 2003 MOTION
6. CERTIFICATE OF SERVICE

on all parties or their lead counsel of record on the date below as follows:

Service To:

Service Perfected By:

Carol Sureau  
Deputy Insurance Commissioner  
Office of the Insurance Commissioner  
5000 Capitol Boulevard  
Tumwater, WA 98501

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☐ By Legal Messenger Service  
☐ By Hand Delivery  
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P.O. Box 40255  
Olympia, WA 98504-0255

CERTIFICATE OF SERVICE - 1

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| Service To:   | Service Perfected By:   |
|---|---|
| (Original & 4 plus 1 Electronic by E-Mail)  |   |
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| Amy McCullough<br>James Davis<br>Alaska Legal Services<br>Corporation<br>1016 West 6 <sup>th</sup> Avenue, Ste. 200<br>Anchorage, AK 99501                                      | <input checked="" type="checkbox"/> By United States Mail<br><input type="checkbox"/> By Overnight Delivery<br><input type="checkbox"/> By Legal Messenger Service<br><input type="checkbox"/> By Hand Delivery<br><input checked="" type="checkbox"/> By Facsimile<br><input type="checkbox"/> By E-Mail |
| Mr. Richard E. Spoonemore<br>Sirianni Youtz Meier & Spoonemore<br>1100 Millennium Tower<br>719 Second Av., Suite 1100<br>Seattle, WA 98104                                      | <input checked="" type="checkbox"/> By United States Mail<br><input type="checkbox"/> By Overnight Delivery<br><input type="checkbox"/> By Legal Messenger Service<br><input type="checkbox"/> By Hand Delivery<br><input checked="" type="checkbox"/> By Facsimile<br><input type="checkbox"/> By E-Mail |
| Eleanor Hamburger<br>John Midgley<br>Columbia Legal Services<br>101 Yesler Way, Suite 300<br>Seattle, WA 98104  | <input checked="" type="checkbox"/> By United States Mail<br><input type="checkbox"/> By Overnight Delivery<br><input type="checkbox"/> By Legal Messenger Service<br><input type="checkbox"/> By Hand Delivery<br><input checked="" type="checkbox"/> By Facsimile<br><input type="checkbox"/> By E-Mail |
| Michael Madden<br>Michael S. Shachat<br>Bennett Bigelow & Leedom, P.S.<br>1700 Seventh Avenue, Suite 1900<br>Seattle, WA 98101  | <input checked="" type="checkbox"/> By United States Mail<br><input type="checkbox"/> By Overnight Delivery<br><input type="checkbox"/> By Legal Messenger Service<br><input type="checkbox"/> By Hand Delivery<br><input checked="" type="checkbox"/> By Facsimile                                       |

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